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SUBJECT: Assistant USTR Karesh Discusses the Labor Contract Law in Guangzhou

Ref: Guangzhou 414

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11. (SBU) Summary: China's new Labor Contract Law is forcing U.S. companies to reassess their hiring strategies, especially with regard to contract workers, according to executives who met recently with Assistant U.S. Trade Representative (AUSTR) for Labor Affairs Lewis Karesh. All of the executives -- from Procter and Gamble (P&G), Avon, Wrigley, and Jabil -- agreed that employee unions were not noticeably strengthened by the new law. They also complained that government plans for implementation of new labor legislation were unclear but commended government efforts to solicit private sector feedback. Although a representative of the Guangzhou Lawyers Association described the Labor Contract Law as an important step in improving the Chinese social security system, U.S. company executives pointed to outstanding problems and agreed that comprehensive reform is still a ways off. End summary.

More Difficult to Use Contract Workers

12. (SBU) A number of American companies told AUSTR Karesh that the Labor Contract Law is forcing them to reassess their HR strategies in south China. Hide Aida, P&G's HR General Manager for Greater China, said that his company is redesigning its operations to ensure that full-time and contract employees do not share any responsibilities. According to Aida, the law requires contract workers who perform the same tasks as full-time employees to be compensated at the same level. Aida said that a contract employee costs P&G about 40% less than a comparable full-time staffer.

13. (SBU) Jabil's HR Regional Manager for Greater China, Tim Noun-Sin, told AUSTR Karesh that she finds a provision in the law preventing companies from hiring contract workers for longer than six months to be problematic. She pointed out that Jabil, which provides services to electronics manufacturers, often has projects that last about a year, and replacing all the contract workers halfway through each project would be prohibitively expensive. As a result, she said, the company is trying to move many of its contract workers onto the payroll as full-time employees. (Comment: this matches what the Consulate has heard from other contacts in the business community. Shenzhen Development Bank Chairman and CEO Frank Newman recently told Consul General Goldberg that his bank has been forced by the Labor Contract Law to convert most of its contract workers into full-time employees. End Comment.)

Unions Still Weak

14. (SBU) All of the company officials who met with AUSTR Karesh agreed that unions in south China haven't been strengthened much by the Labor Contract Law. P&G's Aida described his company's 10-year old union as an "employee association" that mostly organizes picnics and similar events. Jabil's Tim described the unions that existed in her plants similarly. Aida said that P&G management essentially selects the union leaders by encouraging their favored candidates to step forward. As a result, Aida said, the union has been very supportive of management in labor disputes, so far staying neutral in labor mediation and lawsuits pursued by P&G employees. Jabil's Tim and Avon's HRSC Manager, Ivy Long, agreed, saying that while their companies' unions could theoretically assist workers in disputes with management, they've seen little evidence that this is happening. The HR executives also told AUSTR Karesh that they are having no more trouble terminating employees than they were before. Jabil's Tim agreed, but noted that the reasons must be documented and severance payments, which often become a point of negotiation, must be made. Aida commented that non-fixed, open-ended contracts such as the ones signed by most P&G full-time employees are little affected by the law.

15. (SBU) Aida asserted that the Guangdong government has recently been pushing P&G to establish collective bargaining with its unions, but the company has so far successfully resisted this pressure. Aida commented that P&G sees collective bargaining as a serious threat to its labor policies in China and is trying hard to avoid it. He added that the government is privately telling him that it

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only wants "token" collective bargaining from P&G, as it primarily wants to use their example as leverage with other international companies.

Problematic Implementation

16. (SBU) Although the executives all gave the government high marks for soliciting and listening to private sector feedback, they were less enthused about implementation of recent employment laws. Wrigley's People, Learning, and Development Director, Daniel Mo, complained about a lack of clarity, pointing out that the Employment Promotion Law's provision banning discrimination for medical reasons conflicts with the Food Law, which requires companies to certify hygiene licenses for employees. Jabil's Tim agreed, claiming that there is currently no one in the government who can give legal advice about the new laws. Xiao Shengfang, of the Guangzhou Lawyers Association, agreed that implementation has been uneven but said government regulations concerning the Labor Contract Law would be published by the end of the year and should bring a more consistent and clear approach. (Some implementation guidelines have been published - see Reftel.)

Effects of Labor Arbitration Law

17. (SBU) According to the Guangzhou Lawyers Association's Xiao, the recently promulgated Labor Arbitration Law has lowered the barriers for workers to take advantage of arbitration by eliminating all related fees. Xiao told AUSTR Karesh that the number of arbitration cases in Guangdong Province has increased dramatically in the last few months, although he sees this as pent-up demand that will decline as the cases move through the system. Xiao further commented that the most common arbitration cases involve disputes about overtime payments; severance payments; social security funding; and employers changing an employee's position or salary without consent.

Social Security Program a Patchwork

18. (SBU) The Guangzhou Lawyers Association's Xiao also told AUSTR Karesh that one of the benefits of the Labor Contract Law has been a great increase in social security coverage. He explained that social security payments typically result from having an official, signed contract, and the contract signing rate for workers has increased dramatically since the law came into force. The company executives all pointed to ongoing flaws in the social security program, however, including its poor portability between locations and patchwork regulations. Avon's Long commented that companies with country-wide operations typically have to adopt the highest possible level of benefits across all areas in order to avoid trouble. Wrigley's Mo said that unifying the social security program will be extremely complicated and that he doesn't expect any major changes before 2010 at the earliest.

19. (U) USTR cleared this cable.

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